Consolidated Traction Co. v. Glynn, 30 Vroom (N. J.), 432; but if the contributory negligence was present it makes no difference whether a signal was given or not. *Merkle v. N. Y., L. Erie & West. R. R. Co.,* 20 Vroom (N. J.), 473; *Heaney v. L. Island R. R. Co.,* 112 N. Y., 122. It has even been held that this doctrine is as applicable to a child as to an adult. *Hayes v. Norcross,* 162 Mass., 546. It is also worthy of note that in the case of steam railroads the rule that one must look before crossing admits of no relaxation. *McGrory Adm'x. v. Chicago, M. & St. P. Ry. Co.,* 31 Fed., 531. There are some recent cases, however, that hold it not negligence *per se* for a person crossing a trolley track not to look. *Warner v. Bangor, Orono & Old Town R. R. Co.,* 95 Me., 115; *Kelly v. Wakefield, etc., Street R. R.,* 75 Mass., 331. However, he must do for his safety what an ordinarily careful person would do, under like circumstances, *Hall v. West End Street R. R.,* 168 Mass., 461.

TRIAL—COURSE AND CONDUCT OF TRIAL—PRESENCE OF JUDGE—ERROR.—KRUSE V. ST. LOUIS, I. M. AND S. RY. CO., 133 S. W., 841 (ARK.).—*Held,* that the temporary absence of a judge from a trial, unless the party complaining showed some misconduct of his adversary during such absence, will not be considered such error as will justify a new trial. Kirby and Hart, J. J., *dissenting.*

There is a decided conflict of authority as to the case under discussion, but the general American rule seems to be that the absence of a trial judge, without the consent of the parties, from the courtroom during a trial, is material error, for which judgment should be reversed and a new trial ordered, 1 *Thomp. Trials,* Sec. 955; *State v. Smith,* 49 Conn., 376; *Smith v. Sherwood,* 95 Wis., 558, and especially during the closing argument of counsel. *Brownlee v. Hewitt,* 1 Mo. App., 360. It has been held that though a party make no objection to a judge's absence, yet that will not prejudice his interests. *State v. Claudius,* 1 Mo. App., 551. There is, however, some authority for the proposition that if a party make no objection to such absence he can not obtain a new trial. *O'Shields v. State,* 81 Ga., 301; *Pritchett v. State,* 92 Ga., 301; and so it has also been held that the appellee must show that there has been no prejudice during the absence in order to prevent adjudication of error. *State v. Carnacy,* 106 Iowa, 483. There is also authority for the view that it is within the discretion of the judge whether or not to absent himself at any time during the trial, and if he so does, and no prejudice is shown, it is not error. *Baxter v. Ray,* 52 Iowa, 336; and it has also been held that if counsel continue their arguments right to appeal is waived, whether prejudice occurs or not. *Oakley v. Aspinwall,* 3 N. Y., 547.

TRIAL—INSTRUCTIONS.—SOUTHERN RY. CO. V. JOHNSON'S ADM'X., 69 S. E., 323 (VA.).—*Held,* that where a railroad engineer was killed in a collision due to his violation of the signal rules, and the evidence showed neither knowledge of infractions of the rule by the superintendent or his assistants, nor a fixed habit of disregarding the rule, the court erred in submitting to the jury whether compliance with the rule had been suspended or waived.

An employee of a railroad company is bound to obey all reasonable rules. *Prather v. R. and D. Ry. Co.,* 80 Ga., 427. Thus, an employee obligates himself to observe and conform to the rules of the company according to the plain terms thereof, and not according to what may have been the customary practice among other employees, regardless of the express requirements of the rules. *Sordy v. N. Y., P. & N. Ry. Co.,* 75 Md., 297. It is no evidence of the waiver of any rule that the employees of the company were accustomed to act in disregard of it unless the officer charged with its enforcement was aware of such custom. *O'Neill v. The Keokuk & Des Moines R. R.,* 45 Ia., 546. Where the violation of the rule is relied on as a defense, it must be put forward by a special plea. But if rules and regulations established by the master are habitually disobeyed with the knowledge or express consent of the master, or have been disregarded without his express consent in such a manner, and for such a length of time, as to raise a presumption that the master must have been aware of such habitual disregard, and approved it, such rules and regulations must be regarded as abrogated. *Konold v. Rio Grande Western Ry. Co.,* 21 Utah, 379. However, knowledge that the rules were usually violated need not be shown by direct evidence, but may be inferred from circumstances, as from its notoriety, long standing, and that it was known to the company's employes. *Barry v. The Hannibal and St. J. Ry. Co.,* 98 Mo., 63. The claim that it was abrogated by acts of the employees, known to proper officers, does not affect the admission of the rule in evidence and merely constitutes defensive matter. *Ford v. C., R. I. & P. Ry. Co.,* 91 Ia., 179.

WILLS—ADMISSION TO PROBATE—EVIDENCE OF EXECUTION.—IN RE MORLEY'S (OR MARLEY'S) WILL, 125 N. Y. SUPP., 886.—*Held,* that where the circumstances surrounding the execution of a paper show that it was executed as a will, it may be admitted to probate against the testimony of all the subscribing witnesses, or on the testimony of one and against that of the other.

A will is entitled to probate where the attestation clause and all the surrounding circumstances show due execution. *Abbott v. Abbott,* 41 Mich., 540; *Webb v. Dye,* 18 W. Va., 376. While all the witnesses should usually be called to testify, it is never necessary that each be able to testify that all the formalities required for the attestation and execution were complied with. *In re Shapter's Estate,* 35 Colo., 578; *Newhouse v. Godwin,* 17 Barb., 236. Corroborating circumstances may show due execution in opposition to testimony of a subscribing witness, *In re Cottrell,* 95 N. Y., 329; *McCurdy v. Neall,* 42 N. J. Eq., 333, or of more than one or all the subscribing witnesses. *In re Jenkin's Will,* 43 Wis., 610; *In re Sizer's Will,* 113 N. Y. Supp., 210. It is the duty of the judge or surrogate to decide which testimony to believe, and admit or not admit the will accordingly. *Tarrant v. Ware,* 25 N. Y., 425, in note to *Trustees of Theological Seminary of Auburn v. Calhoun,* 25 N. Y., 422. The testimony of subscribing witnesses called to oppose execution will be received with suspicion. *McMeekin v. McMeekin,* 65 Ky., 79; *Lamberts v. Cooper's Ex'r,* 69 Va., 61. Especially if bias, prejudice, or interest on their part is